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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,530	07/05/2006	Claus Tipsmark	66722-092-7	5393

25269 7590 08/24/2010
DYKEMA GOSSETT PLLC
FRANKLIN SQUARE, THIRD FLOOR WEST
1300 I STREET, NW
WASHINGTON, DC 20005

EXAMINER

NI, SUHAN

ART UNIT	PAPER NUMBER
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2614

MAIL DATE	DELIVERY MODE
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08/24/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/581,530	Applicant(s) TIPSMARK ET AL.	
	Examiner Suhan Ni	Art Unit 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is responsive to the amendment dated 05/25/01.

Claim Rejections - 35 USC § 112, 2nd Paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the limitation of “**the reinforced polymer compound has a B-module which is higher than 13 MPa**” in line 7 is indefinite since it is not clear how such limitation has been determined.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoneta et al. (U. S. Pat. - 5,663,276).

Regarding claim 1, Yoneta et al. disclose a device comprising casing parts, wherein at least one said casing parts is shaped from an injection molded fiber-reinforced polymer which has a fiber contents between 30% and 75% by weight (col. 8, lines 8-67) as claimed. But Yoneta

Art Unit: 2614

et al. may not clearly teach all the details of the device as claimed. Since Yoneta et al. do suggest utilizing said casing parts in a hearing aid (col. 9, line 34), and providing suitable/necessary elements for a communication device, such as a hearing aid is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide suitable casing parts taught by Yoneta et al. for a communication device, such as a hearing aid with all suitable/necessary/well-known elements, in order to utilize the casing parts in a hearing aid (which is also suggested by Yoneta et al (col. 9, line 34)).

Furthermore, Yoneta et al. may not clearly teach that the reinforced polymer compound has an E-module which is higher than 13 MPa as claimed. Since Yoneta et al. do not specially restrict the reinforced polymer compound, and providing suitable and commercially reinforced polymer compound for casing parts of a communication device, such as a hearing aid is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide suitable reinforced polymer compound, for example with B-module which is higher than 14 MPa, for the casing parts taught by Yoneta et al. of a communication device, such as a hearing aid, in order to provide a comfort fit to user's ear canal (with proper softness/hardness).

Regarding claim 2, Yoneta et al. further disclose the device, wherein the fiber content is between 40% and 60% and preferably at 50% by weight (col. 8, lines 63-67).

Regarding claims 3-4, Yoneta et al. further disclose the device, wherein the reinforced polymer is a polymylamide-based compound and the fiber-reinforcement comprises glass fibers (col. 8, lines 8-22) as claimed.

Art Unit: 2614

Regarding claims 6-7, Yoneta et al. may not clearly teach that the reinforced polymer compound has an E-module which is higher than 15 or 18 MPa as claimed. Since Yoneta et al. do not specially restrict the reinforced polymer compound, and providing suitable and commercially reinforced polymer compound for casing parts of a communication device, such as a hearing aid is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide suitable reinforced polymer compound, for example with B-module which is higher than 16 MPa, for the casing parts taught by Yoneta et al. of a communication device, such as a hearing aid, in order to provide a comfort fit to user's ear canal (with proper softness/hardness).

Regarding claims 8-10, Yoneta et al. may not clearly teach all the details of the device as claimed. Since Yoneta et al. do suggest utilizing said casing parts in a hearing aid (col. 9, line 34), and providing suitable/necessary elements for a communication device, such as a hearing aid is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide suitable casing parts taught by Yoneta et al. for a communication device, such as a hearing aid with all suitable/necessary/well-known elements, in order to utilize the casing parts in a hearing aid (which is also suggested by Yoneta et al (col. 9, line 34)).

Response to Amendment

4. Applicant's arguments dated 06/17/2010 have been fully considered, but they are not deemed to be persuasive.

In the cited reference (U. S. Pat. - 5,663,276), Yoneta et al. do clearly show a device comprising casing parts, wherein at least one said casing parts is shaped from an injection

Art Unit: 2614

molded fiber-reinforced polymer which has a fiber contents between 30% and 75% by weight (col. 8, lines 8-67) as claimed. But Yoneta et al. may not clearly teach all the details of the device as claimed. Since Yoneta et al. do suggest utilizing said casing parts in a hearing aid (col. 9, line 34), and providing suitable/necessary elements for a communication device, such as a hearing aid is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide suitable casing parts taught by Yoneta et al. for a communication device, such as a hearing aid with all suitable/necessary/well-known elements, in order to utilize the casing parts in a hearing aid (which is also suggested by Yoneta et al (col. 9, line 34)). Furthermore, Yoneta et al. may not clearly teach that the reinforced polymer compound has an E-module which is higher than 13 MPa as claimed. Since Yoneta et al. do not specially restrict the reinforced polymer compound, and providing suitable and commercially reinforced polymer compound for casing parts of a communication device, such as a hearing aid is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide suitable reinforced polymer compound, for example with B-module which is higher than 14 MPa, for the casing parts taught by Yoneta et al. of a communication device, such as a hearing aid, in order to provide a comfort fit to user's ear canal (with proper softness/hardness).

Under the remarks, the applicants state that the prior art makes "... no disclosure of the composition containing 30-75 wt% of parts ..." (page 2), the examiner respectfully disagrees with the applicants. Primarily, even the applicants agree that the prior art shows a composition containing 95 wt% or less, which clearly including 30-75 wt% as claimed. Secondly, the

Art Unit: 2614

applicants fail to provide persuasive evidence in the specification to show the range of “30-75 wt%” as claimed is inventively determined.

Regarding claim 1, the applicants argue no motivation to combine the references. It is not necessary that the references actually suggest, expressly or in so many words the changes or improvements that applicants have made. The test for combining references is what the references as whole would have suggested to one of ordinary skilled in the art. **In re Sheckler, 168 USPQ 716 (CCPA 1971); In re Mlaughlin 170 USPQ 209 (CCPA 1971); In re Young 159 USPQ 715 (CCPA 1968).**

Conclusion

5. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL.**

6. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any response to this final action should be mailed to:

**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is **(571)-272-7505**, and the number for fax machine is **(703)-872-9306**. The examiner can normally be reached on Monday

Art Unit: 2614

through Thursday from 9:00 am to 7:30 pm. If it is necessary, the examiner's supervisor, **Curtis Kuntz**, can be reached at **(571)-272-7499**.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

9. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is **(571)-272-2600**, or please see <http://www.uspto.gov/web/info/2600>.

/Suhan Ni/
Primary Examiner, Art Unit 2614